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SOAH DOCKET NO. 473-22-04394
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APPLICATION OF ENTERGY	§	BEFORE THE STATE OFFICE
TEXAS, INC. FOR AUTHORITY TO	§	OF
CHANGE RATES	§	ADMINISTRATIVE HEARINGS

REBUTTAL TESTIMONY

OF

JESS K. TOTTEN

ON BEHALF OF

ENTERGY TEXAS

NOVEMBER 2022

ENTERGY TEXAS, INC.
REBUTTAL TESTIMONY OF JESS K. TOTTEN
SOAH DOCKET NO. 473-22-04394
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1 **I. WITNESS IDENTIFICATION AND QUALIFICATIONS**

2 Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS

3 A. My name is Jess K. Totten. I am a Principal with Osprey Energy Group, LLC. My
4 business address is 4930 Trail West Drive, Austin, Texas 78735.

5

6 Q2. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

7 A. I am testifying on behalf of Entergy Texas, Inc. (“Entergy Texas,” “ETI” or “the
8 Company”).

9

10 Q3. ARE YOU THE SAME JESS K. TOTTEN WHO FILED DIRECT TESTIMONY
11 IN THIS CASE?

12 A. Yes.

13

14 **II. ASSIGNMENT AND SUMMARY OF TESTIMONY**

15 Q4. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS
16 PROCEEDING?

17 A. I filed direct testimony on behalf of Entergy Texas in support of its request to
18 recover a higher rate of return on equity (“ROE”) based on the high-quality
19 performance of the Company and its management team. Several intervenor
20 witnesses have filed testimony opposing such an increase in the ROE, and I am
21 filing a response to their testimony. In addition, several intervenor witnesses have
22 filed testimony relating to the rate treatment of generating plants that are nearing

1 their retirement. I am also responding to their testimony. On both of these topics,
2 my testimony primarily addresses policy issues, and other ETI witnesses provide
3 additional factual responses to the intervenors' testimonies.

4
5 Q5. PLEASE SUMMARIZE YOUR TESTIMONY AND CONCLUSIONS.

6 A. As I testified in my direct testimony, Section 36.052 of the Public Utility
7 Regulatory Act ("PURA") directs the Commission to consider a number of factors
8 in determining a rate of return for an electric utility.¹ I conclude that Entergy Texas
9 has performed well on several of the factors listed in this section, warranting
10 adoption of a higher rate of return as a result of this high-quality performance.
11 Certain intervenor witnesses have proposed policy reasons for ignoring this
12 statutory directive, but none of these arguments has merit. Intervenor witnesses
13 have also provided fact-based arguments against awarding ETI a higher rate of
14 return, none of which support the conclusion that the Company's performance has
15 not been high quality.

16 Intervenor witnesses have also proposed that the Commission adopt a rate
17 rider specifically to recover the costs of plants nearing retirement or require ETI to
18 implement a regulatory liability related to the plants. Under the rider, ETI would
19 not be permitted to recover a return or carrying costs on the unrecovered balance of
20 the plant costs after they are retired. The regulatory liability would book any over-
21 recovery of plant costs which would then be returned to customers in a future rate

¹ Tex. Util. Code § 36.052.

1 case. These recommendations are inconsistent with the Commission's Cost of
2 Service rule. The rider is essentially a post-test-year adjustment that does not meet
3 the timeline of the rule, and the regulatory liability is simply a different mechanism
4 to achieve the same result. Both should be rejected. Moreover, these
5 recommendations could fail to provide ETI an adequate opportunity to earn a return
6 on its invested capital, contrary to longstanding Supreme Court precedent.

7
8 **III. HIGHER ROE FOR GOOD PERFORMANCE**

9 Q6. DID THE INTERVENORS OR STAFF FILE TESTIMONY ADDRESSING
10 WHETHER THE COMMISSION SHOULD ADJUST A UTILITY'S ROE
11 BASED ON THE FACTORS SET OUT IN PURA § 36.052?

12 A. Yes. Mr. Mark E. Garrett, testifying for Cities,² Mr. Alex Kronauer, testifying for
13 Walmart Inc., Charles S. Griffey, testifying for the Texas Industrial Energy
14 Consumers, and Mark Filarowicz, testifying for Staff of the Public Utility
15 Commission of Texas ("Staff"), make a number of policy arguments opposing a
16 performance-based ROE adjustment. They argue that:

17 (1) ETI has not provided a cost-benefit study to support its request for the
18 adjustment.³

² Cities include the Cities of Anahuac, Beaumont, Bridge City, Cleveland, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Nederland, Oak Ridge North, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Roman Forest, Rose City, Shenandoah, Silsbee, Sour Lake, Splendor, Vidor, West Orange, and Willis.

³ Direct Testimony of Mark E. Garrett ("M. Garrett Direct") at 76.

- 1 (2) An adder is not necessary to comply with PURA § 36.052.⁴
- 2 (3) The cases cited in my direct testimony do not include an adjustment to the
- 3 ROE for poor utility performance.⁵
- 4 (4) It is inappropriate for the Commission to look back at performance in the
- 5 past to adjust rates for the future.⁶
- 6 (5) Customers' expectations are for prudent management decisions and high-
- 7 level performance.⁷
- 8 (6) ETI has a service-area monopoly that could be revoked for poor
- 9 performance, so the possibility of losing its franchise in a municipality
- 10 already provides incentives for good performance.⁸
- 11 (7) It would be unfair to reward Entergy Texas to incentivize good performance
- 12 by other utilities.⁹
- 13 (8) ETI and its customers already share in the Company's ability to exercise
- 14 cost discipline to keep rates low.¹⁰

⁴ *Id.*, at 77.

⁵ *Id.*, at 77-78.

⁶ *Id.*, at 78-79.

⁷ *Id.*, at 79.

⁸ *Id.*, at 80.

⁹ *Id.*, at 81.

¹⁰ *Id.*, at 81-82.

1 (9) Such an adjustment should only be made in connection with a system of
2 specific performance measures and the potential for negative adjustments
3 for poor performance against those measures.¹¹

4 (10) Such an adjustment would represent a non-cost factor in rates, which should
5 be based solely on costs.¹²

6 (11) Facilitating customers' participation in the LIHEAP program was
7 something that Entergy Corp. was given an award for, not ETI, and that
8 facilitating their participation in the program already provides benefits to
9 ETI, so that the additional benefit of an enhanced ROE is not appropriate.¹³
10 Mr. Garrett and Mr. Griffey also advance data-based arguments against

11 ETI's proposed ROE adjustment. They argue that the Company:

12 (1) Had low reliability metrics in 2021.¹⁴

13 (2) Delayed the deployment of Advanced Metering System ("AMS") after
14 Hurricanes Delta and Laura, resulting in higher costs.¹⁵

15 (3) Had average rates compared to an appropriate proxy group.¹⁶

16 (4) Had average customers satisfaction levels.¹⁷

¹¹ Direct Testimony of Alex Kronauer, at 12.

¹² *Id.*

¹³ Direct Testimony of Charles S. Griffey ("Griffey Direct"), at 30-31.

¹⁴ M. Garrett Direct, at 82-83.

¹⁵ *Id.*, at 83-84.

¹⁶ Griffey Direct, at 4-13.

¹⁷ *Id.*, at 13-15.

1 (5) Has not demonstrated that its operations and management (“O&M”) cost
2 performance was exceptional.¹⁸

3 (6) Has not demonstrated that its hurricane-recovery efforts were exceptional.¹⁹

4 (7) Has not demonstrated that its management of the construction of the
5 Montgomery County Power Station (“MCPS”) was exceptional.²⁰

6 (8) Has not demonstrated effective resource planning based on the
7 Commission’s decision in a request to amend ETI’s Certificate of
8 Convenience and Necessity (“CCN”) to acquire a solar power plant in
9 Liberty County.²¹

10 Finally, Mr. Filarowicz testifies that the Commission has never granted an
11 ROE adder to recognize the quality and efficiency of a utility’s management or
12 service, and, instead, a holistic approach that considers both financial conditions
13 and the utility’s performance should be used in setting an ROE.²² The policy
14 arguments listed above are addressed below. The factual aspects of the arguments
15 raised by Mr. Garrett and Mr. Griffey are addressed both by other rebuttal witnesses
16 as discussed below.

¹⁸ *Id.*, at 15-19.

¹⁹ *Id.*, at 19-24.

²⁰ *Id.*, at 24-28.

²¹ *Ibid*, at 28-30.

²² Direct Testimony of Mark Filarowicz, at 33-36.

1 Q7. WHAT IS YOUR RESPONSE TO THESE WITNESSES' POLICY
2 ARGUMENTS MADE IN OPPOSITION OF AN ROE ADDER?
3 A. In general, the provisions of PURA § 36.052 direct the Commission to consider
4 certain factors in setting a rate of return for a utility, but they give it broad discretion
5 in how it does so. Moreover, the Commission has not adopted a rule to provide
6 more detail on how it would apply this section, although it does include a rephrased
7 version of the statute in its Cost of Service rule.²³ As discussed in my direct
8 testimony, there have been two recent rate cases in which ROE adjustments have
9 been proposed through testimony filed in the case, and, in my view, the
10 Commission in one of the cases reduced the utility's ROE because of allegations of
11 poor reliability.²⁴ There are not any additional requirements associated with an
12 adjustment to the ROE that need to be met in order for the Commission to make a
13 positive adjustment in this case. My response to the individual policy arguments
14 raised by parties follows.

²³ 16 Tex. Admin. Code ("TAC") § 25.231(c)(1)(B).

²⁴ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 51415, Proposal for Decision, at 139-140; Docket No. 51415, Chairman Lake Memorandum, Nov. 17, 2021, at 2; Docket No. 51415, Order at 2, Jan. 14, 2022.

1 Q8. IS A COST-BENEFIT STUDY REQUIRED IN ORDER FOR THE
2 COMMISSION TO APPLY AN ROE ENHANCEMENT FOR GOOD
3 PERFORMANCE?

4 A. No. Based on my review of Commission precedent and rules, the Commission has
5 not adopted rules requiring a cost-benefit study, witnesses in previous cases that
6 have proposed a performance-based adjustment to ROE have not included such
7 studies in their testimony, and the Commission reduced the ROE in Docket
8 No. 51415 without the benefit of such a study. It also seems unlikely that such a
9 study would provide salient information. The benefit provided by an adjustment to
10 the ROE is the incentive it provides, positive or negative, to the utility's
11 management and to other utilities regulated by the Commission. It would appear
12 to be difficult to predict, with any measure of reliability, how effective the incentive
13 would be, and improvements like greater reliability to customers would be difficult
14 to value quantitatively.

15

16 Q9. IS AN ADDER OR DECREMENT NECESSARY IN ALL INSTANCES TO
17 COMPLY WITH PURA § 36.052?

18 A. PURA § 36.052 does not require the Commission to adopt an ROE adder to
19 recognize good management and performance in the areas listed in the section. It
20 does, however, direct the Commission to consider these matters in establishing the
21 rate of return (of which ROE is a component). As noted in my direct testimony,
22 such an adjustment (in the negative direction) was proposed in two recent cases,

1 and in SWEPCO's case, Docket No. 51415, there appeared to be a direct connection
2 between utility performance and the Commission's adoption of a lower ROE than
3 the one proposed by the Administrative Law Judges ("ALJs").²⁵ Thus, conversely,
4 an adder for good performance is within the Commission's discretion, if the
5 evidence warrants it.

6
7 Q10. DO THE CASES CITED IN YOUR DIRECT TESTIMONY PROVIDE
8 SUPPORT FOR THE COMMISSION'S AUTHORITY TO MAKE AN ROE
9 ADJUSTMENT?

10 A. Yes. As an initial matter, contrary to Mr. Garrett's assertions, my direct testimony
11 makes clear that in the CenterPoint Energy Houston Electric LLC ("CenterPoint")
12 case, I discussed²⁶ the adjustment, while proposed by the ALJs, was not adopted by
13 the Commission.²⁷ Mr. Garrett also argues that a negative adjustment was not
14 adopted by Commission in Southwestern Electric Power Company's "(SWEPCO")
15 case, Docket No. 51415. I disagree with him on that point. It is true that there is
16 not a Finding of Fact that specifically addresses such a negative adjustment.
17 However, the Commission adopted an ROE that was lower than that proposed by
18 the ALJs, after spending most of its discussion during the open meeting talking

²⁵ *See id.*

²⁶ *Application of CenterPoint Energy Houston Electric LLC for Authority to Change Rates*, Docket No. 49421, Proposal for Decision, at 169-170.

²⁷ Direct Testimony of Jess K. Totten at 17.

1 about SWEPCO's reliability performance and what the ROE should be.²⁸ It is very
2 difficult to listen to that discussion or read the transcript without seeing the link the
3 Commissioners made between these two issues. In addition, the discussion of the
4 rate of return in the Final Order includes the following:

5 Furthermore, in establishing a reasonable return on invested capital,
6 PURA § 36.052 provides the Commission authority to consider the
7 efforts of the utility in conserving resources; the quality of service;
8 the efficiency of operations; and the quality of management.
9 SWEPCO has continued to increase its vegetation management
10 expenses but its system average interruption duration index (SAIDI)
11 and system average interruption frequency index (SAIFI) scores
12 have worsened since 2018 which is indicative of periodically
13 unreliable service quality and substandard operational planning.²⁹

14

15 Q11. WOULD IT BE INAPPROPRIATE FOR THE COMMISSION TO CONSIDER
16 FACTUAL INFORMATION FROM THE PAST TO SET RATES FOR THE
17 FUTURE, AS MR. GARRETT SUGGESTS?

18 A. Not at all. Looking back to investment and expenses (in the test year) to set rates
19 for future is exactly the process that the Commission follows in setting rates, and it
20 is set out in its Cost of Service rule. Moreover, it is impossible to envision how
21 PURA § 36.052 would be implemented other than in this manner, and Mr. Garrett
22 does not propose another mechanism.

²⁸ See n. 23, *supra*.

²⁹ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 51415, Final Order, at 2 (citation omitted.)

1 Q12. DO CUSTOMER EXPECTATIONS REGARDING PRUDENT MANAGEMENT
2 AND QUALITY SERVICE STRIP THE COMMISSION OF ITS DISCRETION
3 TO AWARD AN ROE ADDER FOR GOOD PERFORMANCE

4 A. Not at all. It may be true that customers expect prudent management and high-
5 quality service, but that does not override the Legislature's statutory directive to
6 consider the quality and efficiency of a utility's management in setting a rate of
7 return. An increase in the ROE also provides an incentive to the utility for high-
8 quality performance in the future.

9

10 Q13. DOES THE EXISTENCE OF OTHER TYPES OF NEGATIVE INCENTIVES
11 MEAN THAT PERFORMANCE ADDERS ARE INAPPROPRIATE?

12 A. No. Presumably, the existence of statutory deterrents for negative performance
13 would, if anything, suggest that additional deterrents in the form of a performance-
14 based decrement to ROE would be inappropriate. However, as discussed above,
15 and as Mr. Filarowicz points out in his direct testimony, there have been instances
16 in which the Commission has reduced utilities' ROEs for performance reasons.
17 This is all the more reason that for utilities that are providing higher-quality
18 management and service, it is appropriate to use positive incentives, such as the one
19 provided for in PURA § 36.052.

1 Q14. WOULD IT BE UNFAIR TO PROVIDE AN INCENTIVE TO ENTERGY
2 TEXAS IN ORDER TO ATTEMPT TO INFLUENCE THE PERFORMANCE OF
3 OTHER UTILITIES?

4 A. No, although the primary objectives of providing an incentive to ETI are to reward
5 ETI's past high-quality performance and incentivize more of it in the future. The
6 granting of such an incentive can have the additional benefit of incentivizing other
7 utilities to improve their management and performance, but it is purely incidental
8 to the primary objective.

9

10 Q15. IF ETI HAS ALREADY PERFORMED WELL WITHOUT A SPECIFIC ROE
11 ADDER, WHY SHOULD THE COMMISSION PROVIDE ANY FURTHER
12 INCENTIVE?

13 A. While it is true that the current system of setting rates creates incentives for utilities
14 to control their costs and keep rates low, the Legislature enacted PURA § 36.052
15 to the Commission's regulatory tool belt, providing the possibility of additional
16 incentives for high-quality management and performance. Just as competitive
17 businesses who provide exceptional products or services at low costs are rewarded
18 with higher profits, PURA's regulatory construct, which is a substitute for
19 competition,³⁰ requires the consideration of quality performance in setting utilities'
20 return.

³⁰ Tex. Util. Code § 11.002(b).

1 Q16. SHOULD PERFORMANCE-BASED ROE ADDERS BE APPLIED ONLY IN
2 THE CONTEXT OF SPECIFIC PERFORMANCED-BASED GOALS, AS
3 MR. KRONAUER SUGGESTS?

4 A. I don't believe so. As noted above, the Commission has not adopted rules
5 implementing PURA § 36.052 that tie performance to the setting of an ROE. In
6 addition, witnesses in previous cases have proposed adjustment to the ROE despite
7 the absence of such rules, and the Commission reduced the ROE in SWEPCO's
8 case, Docket No. 51415, without having such rules. Presumably, the Commission
9 has been following PURA's mandate without a specific performance-based
10 measure. I believe the Legislature has left this to the Commission's discretion, and
11 that the Commission may grant a positive adjustment based on PURA § 36.052 and
12 the Cost of Service rule.

13

14 Q. SHOULD RATES BE BASED SOLELY ON OBSERVABLE, HISTORICAL
15 COSTS?

16 A. No. A utility's ROE, unlike other costs, is not directly observable. It must be
17 implied through the use of quantitative and qualitative analyses, and in all instances
18 some measure of judgment is required. The Legislature has provided direction to
19 the Commission, through PURA § 36.052, regarding the proper exercise of that
20 judgment by requiring a consideration of performance-based measures in setting
21 utilities' returns.

1 Q17. SHOULD LIHEAP AWARDS BE CONSIDERED IN EVALUATING ETI'S
2 PERFORMANCE?

3 A. I believe it should. LIHEAP is a program funded by the federal government to
4 provide assistance to low-income individuals to pay energy bills and weatherize
5 homes,³¹ but utilities exercise management discretion in how and to what extent
6 such funds are utilized to benefit customers. The U.S. Chamber of Commerce
7 Foundation granted an award to Entergy Corp. stating, "Entergy helped more than
8 250,000 bills get paid with \$65.4 million in assistance, exceeding the goal by almost
9 \$20 million and increasing bill payments by 26 percent over 2019." There are
10 functions that Entergy Corp. performs for the utilities it owns, including ETI, and
11 a program to help low-income energy users affects ETI's customers. Increasing the
12 funds delivered to low-income customers in the Entergy service areas clearly
13 benefitted the utilities, but it is equally clear that this additional source of income
14 would have benefitted the customers as well. Further, LIHEAP funding helps
15 reduce the amount of unpaid utility bills that are treated as uncollectible expense in
16 rate cases and passed on to other customers.

³¹ Rebuttal Testimony of Stuart Barrett, at 18-19.

1 Q18. SHOULD A “HOLISTIC” APPROACH BE THE EXCLUSIVE MEANS OF
2 IMPLEMENTING PURA SECTION 36.052, AS MR. FILAROWICZ
3 SUGGESTS?

4 A. I don’t believe so. As noted above, PURA gives the Commission broad discretion
5 in how to consider a utility’s performance in setting an ROE, and the Commission
6 has not, through rules or decisions in rate cases, specified that a holistic approach
7 is preferred to the adder approach.³² One advantage of the adder approach is that it
8 makes it clear to utilities and those representing customers’ interests whether and
9 how the Commission considers efficiency and performance in setting an ROE. In
10 other words, it would be more transparent and could be more effective in
11 incentivizing future efficiency and good performance. Even a holistic approach
12 that expressly recognizes that the Commission is rewarding a utility’s efficiency
13 and good performance could provide some transparency.

14

15 Q19. WHAT IS YOUR RESPONSE TO THE FACTUAL ARGUMENTS?

16 A. Intervenors have made various arguments, generally challenging the conclusion
17 that ETI has performed well in the areas discussed in my direct testimony or arguing
18 that there were other areas where ETI did not perform well. One of the factual
19 arguments, relating to ETI’s resource planning, is addressed below. The other

³² It is possible that the Commission’s action of adopting a lower ROE for SWEPCO in Docket No. 51415 amounted to the use of the holistic approach, but there is nothing in rules or the order in that case to suggest that other approaches are not permitted.

1 factual arguments are addressed in rebuttal testimony by other witnesses. These
2 pieces of testimony are as follows:

- 3 • Ms. Melanie Taylor filed rebuttal testimony on ETI's reliability metrics,³³
- 4 • Mr. Richard D. Starkweather filed rebuttal testimony on the issue of
5 comparing rates to an appropriate proxy;³⁴
- 6 • Mr. Stuart Barrett filed rebuttal testimony on the AMS deployment,³⁵
7 customer satisfaction,³⁶ and the LIHEAP program;³⁷
- 8 • Mr. Bobby R. Sperandeo filed rebuttal testimony on comparing O&M
9 costs;³⁸
- 10 • Mr. Willie M. Wilson filed testimony on ETI's hurricane restoration
11 planning and efforts;³⁹ and
- 12 • Mr. Gary C. Dickens filed rebuttal testimony on the completion of the
13 construction of the MCPS.

14 Based on the rebuttal testimony of the witnesses listed above, I conclude
15 that the intervenors' challenges to ETI's performance are either not persuasive or
16 do not provide a basis for ignoring its excellent performance in other areas. The

³³ Rebuttal Testimony of Melanie L. Taylor, at 4-7.

³⁴ Rebuttal Testimony of Richard D. Starkweather, at 3-24.

³⁵ Rebuttal Testimony of Stuart Barrett, at 2-6.

³⁶ *Id.*, at 16-18.

³⁷ *Id.*, at 18-19.

³⁸ Rebuttal Testimony of Bobby R. Sperandeo, at 3-5.

³⁹ Rebuttal Testimony of Willie M. Wilson, at 3-17.

1 Company's performance in the areas discussed in my direct testimony are
2 supported by the rebuttal witnesses, and the result is that these are areas of
3 exceptional performance that is indicative of effective and efficient management.

4 **AMS deployment.** Mr. Garrett criticizes the AMS deployment for being
5 delayed, but then recognizes that it was reasonable to delay it because of
6 hurricanes.⁴⁰ He then argues that the implementation costs were higher, which
7 detracts from ETI management's performance. In his direct testimony, Mr. Phillips
8 testifies that ETI started the meter deployment of the AMS project later than
9 projected but completed it ahead of schedule. He also testifies that it had completed
10 the IT-related work of the project, but that work on the communications network
11 was continuing and should be completed by December 2022.⁴¹ He also testifies
12 that the capital costs of the project were about 13% higher than projected.⁴² He
13 testifies that the deployment of the meters was not as steady as models had
14 predicted due in large part to delays caused by the COVID-19 pandemic, which
15 affected the availability of installers, and hurricanes and restoration efforts were
16 major factors in the higher cost of the project.⁴³ Mr. Garrett's testimony seems to
17 suggest that a utility must provide outstanding performance in all areas, despite any
18 challenges, in order to qualify for an increase in the ROE under PURA § 36.052.

⁴⁰ M. Garrett Direct, at 83-84.

⁴¹ Direct Testimony of William Phillips, at 8.

⁴² *Id.*, at 9.

⁴³ *Id.*, at 19-20.

1 That is an unrealistic standard. ETI has performed well, despite encountering major
2 challenges, and should be rewarded for it.

3 **Ineffective planning efforts.** Over the period from 2017 to the present,
4 ETI has sought CCN amendments for two gas-fired generation plants and the
5 Liberty County solar plant. While it is correct that the Commission ruled against
6 the Company in connection with the Liberty County proposal and criticized the
7 Company for its gas-price forecasting and other issues, the Commission has granted
8 a CCN for the Montgomery County gas-fired plant.⁴⁴ The other CCN application,
9 which the Commission recently approved, is for a gas-fired plant in Orange County.
10 In that case, intervenor testimony was filed criticizing the Company for its gas-
11 price forecasting and on other matters. The ALJs, however, have issued a Proposal
12 for Decision supporting ETI's gas-price forecasting and recommending that the
13 CCN be approved, with modifications.⁴⁵ The Commission adopted the ALJs'
14 decision on these issues.⁴⁶ The Liberty County case is only a part of the Company's
15 recent performance in resource planning and forecasting gas prices. The other
16 major cases suggest that ETI has performed well in these areas. Overall, there is
17 not a level or poor performance that should result in ignoring the high-quality
18 performance and management in other areas.

⁴⁴ *Application of Entergy Texas Inc. to Amend its Certificate of Convenience and Necessity to Construct Montgomery County Power Station in Montgomery County*, Docket No. 46416, Final Order (Jul. 28, 2017).

⁴⁵ *Application of Entergy Texas Inc. to Amend its Certificate of Convenience and Necessity to Construct Orange County Advanced Power Station*, Docket No. 52487, Proposal for Decision, at 1, 2, 162, 165, 169.

⁴⁶ *Id.*, Order (Nov. 15, 2022).

IV. RECOVERY OF CAPITAL COSTS FOR PLANTS NEARING RETIREMENT

Q20. DID THE INTERVENORS FILE TESTIMONY ADDRESSING THE RECOVERY OF THE COSTS OF GENERATING PLANTS THAT ARE NEARING RETIREMENT FROM SERVICE?

⁴⁷ Direct Testimony of Constance T. Cannady (“Cannady Direct”), at 11-12.

1 Q21. IS MS. CANNADY’S PROPOSED RIDER LIMITED TO CAPITAL COSTS?

2 A. No. She proposes to remove all costs related to the plants nearing retirement from
3 base rates, putting these costs into the rider she proposes to create. These costs
4 would include O&M expenses, depreciation expenses, and any other costs related
5 to the plants.⁵¹

6

7 Q22. DO YOU AGREE WITH THE PROPOSALS TO ESTABLISH A RATE RIDER
8 OR A REGULATORY LIABILITY FOR THE COSTS ASSOCIATED WITH
9 THESE PLANTS?

10 A. No. I worked on or managed Commission staff in a number of rate cases when I
11 worked at the Commission, and in my view, Ms. Cannady’s and Mr. Garrett’s
12 proposals are inconsistent with the Commission’s rule relating to cost of service.
13 The Commission’s Cost of Service rule, Substantive Rule 25.231, directs that rates
14 be based upon a utility’s cost of service during a historical test year, adjusted for
15 known and measurable changes.⁵² The utility’s invested capital to be included in
16 rates (referred to as “rate base” in the rule) is fixed at the end of the test year. The
17 test year applicable to this proceeding ended nearly 11 months ago, on
18 December 31, 2021. All of the generating units for which Ms. Cannady and
19 Mr. Garrett propose the special rate rider are still in service today. As plants that
20 were providing service to customers during the test year, their capital costs are a

⁵¹ *Id.*, at 15.

⁵² 16 TAC § 25.231(a).

1 part of the test-year rate base that is to be used to set rates under the Cost of Service
2 rule.

3 The Cost of Service rule does allow post-test year adjustments to test-year
4 rate base, but only when certain criteria are met. Section 25.231(c)(2)(F) sets out
5 the requirements for a post-test year adjustment to the test-year rate base. One of
6 these criteria is a timing requirement that applies for both post-test year additions
7 and post-test year reductions to rate base: the plant in question must be in service
8 (additions) or removed from service (decreases) prior to the rate year.⁵³

9 The term rate year is defined in the Commission's rules as the 12-month
10 period beginning with the first date that rates become effective.⁵⁴ By law, rates set
11 in this proceeding are effective for energy consumption on and after the 155th day
12 after the date this proceeding was filed.⁵⁵ This proceeding was filed on July 1,
13 2022, so the 155th day will fall on December 3, 2022. None of the plants is planned
14 for retirement by that date. Thus, the proposal to create a rider for plant capital
15 costs on plants nearing retirement is not consistent with the terms of the Cost of
16 Service rule. The same is true for Mr. Garrett's proposal. He is simply choosing a
17 different mechanism for removing a part of the current rate base from ETI rates
18 upon the retirement of the generating plants.

⁵³ 16 TAC § 25.231(c)(2)(F)(i)(III), (ii)(II).

⁵⁴ 16 TAC §25.5(101).

⁵⁵ Tex. Util. Code § 36.211(b).

1 Q23. WOULD THE PROPOSED RIDER OR REGULATORY LIABILITY FOR
2 COSTS ASSOCIATED WITH THESE PLANTS OPERATE DIFFERENTLY
3 FROM NORMAL BASE RATES?

4 A. Yes. When new base rates are put in effect, they are based on a broad range of the
5 costs the utility incurs in serving its customers, and they remain in effect until a
6 new base-rate proceeding occurs that results in new rates. During this time, some
7 of the utility's costs may increase or decrease, and the revenue from sales to
8 customers may rise or fall. These changes may offset each other, and any need to
9 change rates may not arise soon after the rates have been set. If there are significant
10 changes in costs or revenues, then the utility may need to initiate a new rate case,
11 or Commission staff or customers may seek a rate reduction.

12 The Cost of Service rule does not contemplate changing rates for changes
13 in specific costs or revenues, without a broad-scope review of the costs and
14 revenues as is achieved in a rate case. Ms. Cannady, on the other hand, would
15 discontinue the recovery of the portion of the Company's expenses and return
16 attributable to a generating plant when that plant is retired.⁵⁶ To the extent that the
17 capital costs of the generating plant are not fully recovered at the time the plant is
18 retired, she would allow the recovery of the remaining unrecovered plant balance,
19 without any carrying charge. Her proposed rider is inconsistent with the general
20 principle that a rate review is a broad-scope review of costs and revenue, and it does

⁵⁶ Cannady Direct, at 15-16.

1 not afford the Company a reasonable opportunity to recover a reasonable return on
2 the full amount invested in the facility.

3 Mr. Garrett's proposal would require ETI to begin booking a liability when
4 one of the plants is retired from service. The amount of the liability would then be
5 included in a future rate case as a reduction to the rate base. Any remaining capital
6 costs for these plants would be removed from rates, rather than keeping them a part
7 of the base rates, as the Cost of Service rule requires. The proposed rider would
8 remove the costs immediately, while the regulatory liability would carry the
9 removed costs forward as a negative amount to be included in the next rate case.

10

11 Q24. IS THERE AN INTERNAL INCONSISTENCY IN MS. CANNADY'S
12 RECOMMENDATIONS?

13 A. I believe that there is. In proposing a rider for the plants nearing retirement that
14 would be discontinued or adjusted when the plant is actually retired, she recognizes
15 that ETI has generating plants that are likely to be retired earlier than previously
16 expected. ETI has requested that the depreciation for several plants be increased,
17 because of the shorter expected remaining plant life. Ms. Cannady has opposed
18 this request, instead proposing that the current depreciation rates be continued for
19 these plants.⁵⁷ Assets should be depreciated over their expected service life,⁵⁸ but
20 she would ignore this principle in continuing the current depreciation rates. There

⁵⁷ Cannady Direct, at 54.

⁵⁸ 16 TAC § 25.231(c)(2)(A)(ii) calls for assets to be depreciated over the life of the asset.

1 is no regulatory principle that would support the inconsistency in her
2 recommendations; they are simply both measures that would result in a lower
3 revenue requirement.

4

5 Q25. DO YOU AGREE WITH THE PROPOSAL TO NOT INCLUDE RETURN OR
6 CARRYING COSTS IN THE MECHANISM FOR THE RECOVERY OF THE
7 COSTS ASSOCIATED WITH THESE PLANTS?

8 A. No. The utility should be able to recover the carrying costs of the unrecovered
9 balance until the balance is fully recovered. A utility's return is a part of its cost of
10 service, because it undertakes equity financing to pay for its capital additions.
11 Discontinuing the recovery of return or financing costs before the full value of the
12 capital asset is recovered amounts to paying less than the full cost of the asset.

13

14 Q26. DOES MS. CANNADY SUPPORT HER PROPOSAL BY CITING PRIOR
15 COMMISSION DECISIONS IN RATE CASES?

16 A. Yes. She cites two rate cases of Southwestern Electric Power Company. The first
17 of the cases she cited is Docket No. 51415, which involved the early retirement of
18 the Dolet Hills generating plant.⁵⁹ She also cites Docket No. 46449, which
19 involved the retirement of Welsh unit 2, in support of her recommendation not to
20 allow return or carrying costs on the undepreciated balance of a retired generating

⁵⁹ Cannady Direct, at 17-19; *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 51415.

1 plant.⁶⁰ I do not believe that either of these cases supports the establishing of a
2 rider for the costs of the Entergy Texas plants nearing retirement.

3 As outlined above, the Entergy Texas plants will be in service at the start of
4 the rate year in this case, and the post-test-year adjustments that Ms. Cannady
5 proposes to create the rider are inconsistent with the Commission's Cost of Service
6 rule. Welsh unit 2 was retired from service in April 2016, while the test year ended
7 June 30, 2016.⁶¹ Thus, the plant was not in service at the end of the test year. There
8 is no discussion of a rider for retired plant costs in the final order in Docket
9 No. 46449, so it appears that the unamortized balance of the Welsh unit 2 costs
10 were included in the base rates.

11 In Docket No. 51415, SWEPCO used a test year ending on March 31, 2020,
12 and had announced that Dolet Hills would be retired by December 31, 2021.⁶²
13 However, the rate case had not been decided when the plant was retired, as the final
14 order was entered on January 14, 2022. The beginning of the rate year was
15 March 18, 2021.⁶³ Thus, the exclusion of these costs from rate base would not be
16 consistent with the rule.

17 The Commission recognized that excluding the Dolet Hills costs from rate
18 base was not consistent with the Cost of Service rule, but it granted a good-cause

⁶⁰ Cannady Direct, at 17-19; *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449.

⁶¹ Final Order, Docket No. 46449, FF 53, 7.

⁶² Final Order, Docket No. 51415, FF 5, 8.

⁶³ *Id.*, CL 23, 24.

1 exception to permit it to do so.⁶⁴ While the Commission did not set out an
2 explanation for granting the good-cause exception, the ALJs' discussion of the
3 issue and recommendation that the exception be granted may be relevant. The ALJs
4 were essentially weighing factors such as the certainty of the event in question, the
5 magnitude of the impact, and the prospect of other off-setting changes in the level
6 of other capital investment that were not being considered because they did not
7 meet the terms of the rule.

8 In the Dolet Hills case, the plant retirement was quite certain, the amount of
9 the plant's invested capital was large (\$45 million, Texas retail), with an impact
10 likely over most of a four-year period, and any excluded capital investments
11 appeared to be small.⁶⁵ ETI's rebuttal witness Anastasia R. Meyer addresses the
12 expected retirement dates of the plants whose costs Ms. Cannady proposes to put
13 into the rider. Based on that testimony, the assumed deactivation dates of two of
14 the plants in question are at least three years out. She also testifies that an assumed
15 deactivation date "is not a formal decision to deactivate or retire a plant by a certain
16 date; rather, it represents a current, reasonable expectation of the plant's remaining
17 useful life for internal planning and depreciation purposes."⁶⁶

⁶⁴ *Id.*, CL 25, 26.

⁶⁵ Proposal for Decision, Docket No. 51415, at 49-53.

⁶⁶ *Id.*, at 7.

1 Q27. DOES MS. CANNADY PROVIDE ADDITIONAL SUPPORT FOR HER
2 PROPOSAL NOT TO INCLUDE IN RATES ANY RETURN OR CARRYING
3 COSTS FOR RETIRED PLANT COSTS AND DO YOU AGREE WITH HER
4 POSITION?

5 A. She cites the two SWEPCO decisions referred to above, referring to Finding of Fact
6 No. 69 in the Commission's decision in the Welsh unit 2 case and Finding of Fact
7 No. 63 in the Dolet Hills decision.⁶⁷ Finding of Fact No. 69 from the Welsh unit 2
8 case reads as follows:

9 Allowing SWEPCO a return of, but not on, its remaining investment
10 in Welsh unit 2 balances the interests of ratepayers and shareholders
11 with respect to a plant that no longer provides service.

12 Finding of Fact No. 63 from the Dolet Hills case is similar.

13 However, the circumstances in this case are different from the
14 circumstances in the SWEPCO cases. The Welsh unit 2 case involved a generating
15 unit that had been retired from service during the test year, so it was clear that the
16 Commission could rely on PURA § 36.051, which directs the Commission to give
17 the utility a reasonable opportunity to “to earn a reasonable return on the utility’s
18 invested capital used and useful in providing service to the public.”⁶⁸ In the current
19 case, none of the generating plants identified by Ms. Cannady has been retired or
20 is likely to be retired by the time the Commission makes a decision in this case.

⁶⁷ Cannady Direct, at 19.

⁶⁸ Tex. Util. Code § 36.051.

1 The plants are all still providing service and should be included in rate base for the
2 calculation of the rates in this case.

3 While a plant, once it is retired, is no longer providing service, the carrying
4 costs of such a plant were capital costs that were incurred to serve the utility's
5 customers. The ETI generating plants have been serving customers for decades.
6 There may be valid reasons to including carrying costs in the unrecovered capital
7 costs of these plants after they have been retired. The Supreme Court has noted
8 that the objectives of setting reasonable rates include that they:

9 be reasonably sufficient to assure confidence in the financial
10 soundness of the utility and should be adequate, under efficient and
11 economical management, to maintain and support its credit and
12 enable it to raise the money necessary for the proper discharge of its
13 public duties.⁶⁹

14 Other regulatory commissions have allowed the recovery of carrying costs for
15 unrecovered plant costs, after the plant's retirement.⁷⁰ In putting these costs in a
16 rider, where the rate of return will be eliminated at the future date of the plant's
17 retirement, the Commission will not be considering these broader financial factors,
18 because they are not known today.

⁶⁹ *Bluefield Water Works v. Public Service Comm'n*, 262 U.S. 679, 693 (1923)

⁷⁰ *Application of Public Service Company of Oklahoma, an Oklahoma Corporation, for an Adjustment in its Rates and Charges and the Electric Service Rules, Regulations and Conditions of Service for Electric Service in the State of Oklahoma, Oklahoma Corporation Commission, Cause No. PUD 201700151, Final Order (Order No. 672864), at 3 (Jan. 31, 2018).*

V. CONCLUSION

2 Q28. SHOULD THE COMMISSION APPROVE A HIGHER ROE FOR ETI IN THIS
3 PROCEEDING?

4 A. Yes. I conclude that ETI has performed well on the statutory factors set out in
5 PURA § 36.052, and that it is appropriate for the Commission to adopt a higher
6 ROE, and thus rate of return, than it would otherwise adopt, based on ETI's high-
7 quality performance.

8

12 A. Notwithstanding the intervenors' arguments, Section 36.052 of PURA provides
13 that the Commission shall consider performance factors in setting a reasonable rate
14 of return for a utility. In my view, this provision explicitly provides authority for
15 the Commission to incentivize high-quality management and service to customers
16 through a higher ROE. Some of the intervenors have insisted that various
17 approaches to implementing this section are necessary, but there is no rule or
18 precedent to support their positions. Providing incentives for strong performance
19 in these areas provides several benefits:

- 20 • it encourages the utility to continue such behavior;
- 21 • it better aligns the utility's goals with its customers' goals, and those of its
- 22 regulator;

21

22

1 • it incentivizes good performance by other utilities whose rates are regulated
2 by the Commission; and

3 • it ensures that the utility and the customer share in the success of the utility.

4 Recognizing high-quality performance through a higher ROE allows ETI continued
5 access to the capital it needs to support its ongoing investments to improve utility
6 infrastructure and continue providing excellent service to its customers. ETI has
7 performed well on the statutory factors set out in PURA § 36.052, and it is
8 appropriate for the Commission to adopt a higher ROE, and thus rate of return, than
9 it would otherwise adopt, based on ETI's high-quality performance.

10

11 Q30. SHOULD THE COMMISSION APPROVE THE RIDER OR REGULATORY
12 LIABILITY FOR GENERATING PLANTS NEARING THEIR RETIREMENT
13 OR MAKE A DECISION NOW NOT TO PERMIT ETI TO RECOVER
14 CARRYING COSTS ON ANY UNRECOVERED CAPITAL COSTS
15 ASSOCIATED WITH THE PLANTS?

16 A. No. The proposals are inconsistent with the Commission's Cost of Service rule and
17 are not supported by the Commission's decision in the Dolet Hills case.

18

19 Q31. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

20 A. Yes.

AFFIDAVIT

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

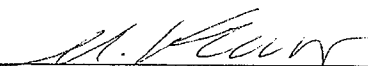
JESS K. TOTTEN, first being sworn on his oath, states:

I am the witness identified in the preceding testimony. I have read the testimony and the accompanying attachments and am familiar with their contents. Based upon my personal knowledge, the facts stated in the testimony are true. In addition, in my judgment and based upon my professional experience, the opinions and conclusions stated in the testimony are true, valid, and accurate.



JESS K. TOTTEN

Subscribed and sworn to before me this 16th day of November, 2022 by JESS K. TOTTEN.



Notary Public, State of Texas
My Commission Expires: Mar 21, 2026

